

NTSB Order No.  
EM-112

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 13th day of July, 1984

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

RICHARD F. HARTLAGE, Appellant.

Docket ME-102

OPINION AND ORDER

The appellant challenges a December 6, 1983 decision of the Vice Commandant (Appeal No. 2334) affirming a one month suspension of his merchant mariner's license (No. 488094) as ordered by Administrative Law Judge Peter A. Fitzpatrick on December 6, 1982 following an evidentiary hearing completed on November 4, 1982.<sup>1</sup> The law judge had sustained a charge of misconduct on finding proved a specification alleging that appellant, while serving as master aboard the SS JACKSONVILLE on or about October 13, 1982, allowed that "vessel to enter the port of Wilmington, NC in a hazardous condition, to wit: without propulsion power, without first notifying the Captain of the port."<sup>2</sup> On appeal appellant contends that the Coast Guard conclusion that his vessel was in a hazardous condition when it entered the port of Wilmington is both erroneous as a matter of law and unsupported by the evidence in the record. He also contends that even if the Coast Guard conclusion were accepted, the charge against him should have been dismissed on the evidence submitted establishing that the respondent notified the Coast Guard of his vessel's condition before it was towed up

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<sup>1</sup>Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

<sup>2</sup>The misconduct charge had also been based on a specification alleging that appellant had failed, several days earlier when the vessel was in the port of Baltimore, to notify the Coast Guard of a failure of the vessel's main propulsion motor. The law judge dismissed this specification because no substantial supporting evidence of a reliable, probative nature was introduced. See Decision and Order at 11.

the Cape Fear River to the port of Wilmington.<sup>3</sup> For the reasons discussed below we agree that the evidence in the record is insufficient to establish that the SS JACKSONVILLE was in a hazardous condition when it entered the port of Wilmington. We accordingly have no occasion to determine whether the requirement that the Captain of the Port be notified was satisfied by the information furnished to a Coast Guard Search and Rescue Station near the site of the loss of propulsion power before the vessel entered the port.

Briefly stated, the record discloses that during a voyage from Baltimore, Maryland to Charleston, South Carolina, when the vessel was at sea off the coast of North Carolina (approximately a mile from Cape Lookout Shoal Buoy No. 44), the main electric propulsion motor on the JACKSONVILLE "grounded out" and could not be restarted.<sup>4</sup> The vessel anchored offshore while the shipping

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<sup>3</sup>Appellant maintains in effect that advice concerning the ship's loss of propulsion power given to a Coast Guard Search and Rescue Station in Norfolk, Virginia by a representative of the ship's owner satisfied the notification requirement. Our disposition of the case makes consideration of the adequacy of this notice unnecessary. We nevertheless point out that the law judge's finding that the representative "did not advise the Coast Guard of the vessel's condition nor that its main propulsion motor was inoperative" (Decision and Order at 6) does not accurately reflect the only evidence on the matter, namely, the representative's testimony that he provided the search and rescue unit with an account of the situation in connection with his request for weather information to relay back to the vessel: "I described the situation just as a preamble to the type of information I wanted.... I gave the vessel's position... the situation... the fact that she did not have propulsion power...." Transcript at p. 253. Moreover, the Vice Commandant's statement (Decision at 6) that this witness "testified that he could not remember reporting the name of the vessel, which further indicated that its propulsion system failure was not likely to have been reported" does not, in our opinion, fairly characterize the testimony. The representative stated (Tr. at 263), in response to the question from appellant's counsel "Did you give them the name of the JACKSONVILLE?", that he "could not swear to that." He went on to state: "I believe I did because, you know, this is a process of notifying quite a few people. I would say that I did because that is what I was doing; my name, the name of the vessel, the situation, and so forth."

<sup>4</sup>The vessel's steam and electric power systems and the other machinery including its steering controls and rudder were not affected.

company's offices in New York made arrangements to have the vessel towed to Wilmington for repairs. A single tug subsequently towed the ship to the mouth of the Cape Fear River where a second tug was made up to the vessel's port quarter and a tug master and a river pilot were taken aboard to navigate up the river and into the port of Wilmington. A third tug was enlisted for the actual docking in the port. The towing. The Coast Guard maintains that notwithstanding the utilization of tugs the vessel was in hazardous condition when it entered the port because its propulsion motor was inoperative.

The regulation establishing the notification requirement at issue in this proceeding, 33 CFR §161.15, provides that:

"Whenever there is a hazardous condition on board a vessel, the owner, master, agent or person in charge shall immediately notify the Captain of the Port of the port or place of destination and the Captain of the Port of the port or place in which the vessel is located of the hazardous condition."

The term "hazardous condition" as employed in this regulation is defined as

"any condition that could adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable water of the United States",

and includes conditions such as "fire, explosion, grounding, leakage, damage, illness of a person on board, or a manning shortage" (33 CFR §161.3).<sup>5</sup> The conditions listed as hazardous are

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<sup>5</sup>We recognize that a propulsion motor problem not reportable as a hazardous condition may nevertheless be subject to reporting requirements relating to marine casualties. See 46 CFR §4.05-1 and 46 CFR §97.07-1. Casualties must be reported to Coast Guard Marine Safety offices or Marine Inspection Offices "as soon as possible," rather than "immediately" to the Captain of the Port as is the case of a hazardous condition. Appellant's compliance with those requirements is not at issue in this proceeding. See Tr. 195-197. It is worth observing, moreover, that the casualty reporting regulations acknowledge that not all marine casualties involve a hazard. For example, under §97.07-1(a) (1), certain groundings need not be reported unless they created "a hazard to navigation, the environment, or the safety of the vessel". We are also aware that certain non-operating equipment may be subject to other reporting requirements. See 33 CFR 164.53(b).

circumstances which, depending on their magnitude, must be checked or corrected to avert the greater or derivative risks or dangers that might otherwise be caused by the conditions. In other words, those that pose an inherent threat to safety or safe operations.<sup>6</sup>

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<sup>6</sup>Since it was not an issue within the pleadings in this case we express no view on the situation had the engine failure occurred at a time or in circumstances in which the fact that the vessel could not move under its own power might itself create or be deemed an emergency situation, such as where the vessel was either in the midst or in the path of severe weather.